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Supreme Court of the United States

OCTOBER TERM, 1943. No. 268.

GEORGE C. BENNETT,
Petitioner,

vs.

JULIUS DE GEETER,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

Statement of Facts and Issues.

Bennett, the petitioner in this proceeding, sued De Geeter in the New Jersey Supreme Court alleging that a contract had been breached. The complaint was very inartistically drawn and it was most difficult to ascertain precisely the theory of Bennett's cause of action. The trial judge before whom two express motions were argued, to strike the bill, was of this opinion—see pages 58 and 59 of State of Case.

After the motions to dismiss were denied, an answer was filed and issue joined. Pursuant to the New Jersey Statute, Bennett was then examined as a witness before trial. At the examination he testified unequivocally and clearly that he was a partner. Under the New Jersey Law,

partnership actions are cognizable only in the Court of Chancery.

Thereupon De Geeter filed a bill in the State Court of Chancery alleging that Bennett's action was an equitable one. After a hearing, the Chancellor issued a preliminary injunction restraining the action at law. Bennett's counsel then moved to strike the bill and this motion was denied. Instead of taking an appeal, Bennett submitted to the jurisdiction of the Court of Chancery, filing an answer and counterclaim. In the counterclaim he specifically asked the court:

> "to construe the relationship between the parties and sought a dissolution and an accounting in the event the Chancellor found that a partnership or joint venture, in fact existed." (See page 3 of Petitioner's Petition for Writ of Certiorari.)

The counterclaim is replete with allegations that he had no remedy at law. See paragraphs 28, 29, 36, 37, 38 and the introductory language to the prayers found on page 82. In the petition filed in this court by Bennett, he concedes that he filed such a counterclaim asking for a construction of the relationship between the parties, etc., (see page 3 of Petitioner's Petition for Writ of Certiorari).

Furthermore, in the Chancery proceedings, Bennett testified that he was a partner and his own counsel (R. p. 312) made this statement:

> "There is no question about the partnership."

Therefore, the issue joined in Chancery and the one to be determined by that court, was the exact relationship existing between the parties.

The Chancellor ruled that Bennett was a mere employee who had been fully compensated for his services. The counterclaim was dismissed and the action at law permanently enjoined.

Bennett then took an appeal to the court of last resort, i. e., the Court of Errors and Appeals. This court has jurisdiction to correct both errors of law and fact. That court affirmed the decision of the Chancellor.

To recapitulate at this point, there never was any question but that the dispute was properly in the state court. The only issue aside from the fact question, was—which state court had jurisdiction? Was it the Court of Chancery, or was it the New Jersey Supreme Court? The tribunal charged with resolving this dispute, is the New Jersey Court of Errors and Appeals. It ruled that the decree of the Chancellor was proper. Such a ruling is dispositive of the entire issue. Whether one state court or the other has jurisdiction over a given controversy is a matter of pure local concern. No federal question is involved.

POINT ONE.

There Is No Federal Question Presented by the Record.

The authority of this court to issue its writ is contained in *Title 28, Section 344 (B)*. That statute provides:

> "Or where any title, right, privilege or immunity is specifically set up or claimed by either party under the constitution or any treaty or statute of, or commission held or authority exercised, the United States."

This court has also by its Rule 38, paragraph 5 (A) provided:

> "Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

There was no dispute below that the Court of Chancery had jurisdiction over the general subject matter. The following state cases are dispositive:

Bowne v. *Windsor,* 106 N. J. Eq. 415;
Wiley v. *Wirbelauer,* 116 N. J. Eq. 391;
Cooperstein v. *Shapiro,* 118 N. J. Eq. 337;
Stein v. *Spearin,* 120 N. J. Eq. 169;
Cooperstein v. *Shapiro,* 122 N. J. Eq. 238;
Vermeule v. *Vermeule,* 82 N. J. Eq. 434;
Braddock v. *Hinehman,* 78 N. J. Eq. 270;
Eugster v. *Eugster,* 89 N. J. Eq. 531;
Jackson v. *Hooper,* 76 N. J. Eq. 185;
Gulick v. *Gulick,* 14 N. J. Law 578;
Davis v. *Minch,* 88 N. J. Law 214;
Savage v. *Dowrie,* 111 N. J. Eq. 108;
Shedacher v. *James,* 107 N. J. Law 400;
Kurth v. *Maier,* 133 N. J. Eq. 388.

By his counterclaim, Bennett, not once but many times, alleged that he had no adequate remedy at law. From the decree of the Chancellor he appealed to the Court of Errors and Appeals and asked that court to reverse the decision of the Chancellor on the facts. He asked the appellate court to award him a decree on his counterclaim. The only dispute now sought to be brought to this court is this: It is claimed that the Chancellor exceeded his jurisdiction when

he restrained the action at law. Bennett's contention now is, that despite the fact that all of the issues were adjudicated upon, that he still has a right to sue in the law court on a *quantum meruit* theory.

If we may refer to the petitioner's own brief in this court under the heading "Conclusion" on page 17, it is said that under the Constitution of the State of New Jersey, the Court of Chancery was without jurisdiction to determine this question, but under the New Jersey State Constitution such jurisdiction was conferred on the Supreme Court. The difficulty with this contention is that the New Jersey Court of Errors and Appeals has ruled that the Court of Chancery did have jurisdiction. That decision is dispositive of the issue. The New Jersey Court of Errors and Appeals is the supreme arbiter on questions of state court jurisdiction. The federal courts have no jurisdiction to determine which of two state courts should entertain a given controversy. The determination of the state courts that the State Constitution has not been infringed is binding on this court. *Brown* v. *New Jersey,* 173 U. S. 172; *Baldwin* v. *Kansas,* 129 U. S. 52; *Bank of Hamilton* v. *Dudley's Lessee,* 2 Pet. 492; *Elmendorf* v. *Tailor,* 10 Wheat. 152; *Herbert* v. *Louisiana,* 272 U. S. 312; *Buchalter* v. *New York,* Advance Reports, Volume 87, No. 17, page 1088.

The following excerpts from these cases are pertinent:

As was well said by this court in *Buchalter* v. *New York, supra:*

> "But the amendment (Fourteenth Amendment) does not draw to itself the provisions of state constitutions or state laws."

In the case of *Baldwin* v. *Kansas, supra,* this court held:

> "The question whether the evidence in the case was sufficient to justify the verdict of a jury, and the question whether the Constitution of the state was complied with or not in the proceedings on the trial, are not federal questions which this court can review."

In the case of *Herbert* v. *Louisiana, supra,* this court held:

> "The due process of law clause of the 14th amendment does not enable the Supreme Court of the United States to revise decisions of the state courts on questions of state law."

So in *Brown* v. *New Jersey, supra,* this court held:

> "The decision of the highest court of a state that a statute is not in conflict with the constitution of the state is conclusive on the Federal Courts."

The petitioner is here attempting to ask this court to determine that the New Jersey Court of Errors and Appeals incorrectly decided that the New Jersey Court of Chancery had jurisdiction rather than the New Jersey Supreme Court. On the authorities above cited, this court will not attempt to decide this question.

Although it is not necessary for our discussion, it will not be amiss to point out that from time immemorial a Court of Chancery having obtained jurisdiction of a cause has the right to retain that cause for the purpose of affording complete relief. In *Pomeroy on Equitable Jurisprudence* Volume I, section 231 (Fifth Edition) it is said:

> "The rule has already been stated as one of the foundations of the concurrent jurisdiction, that where a court of equity has obtained jurisdiction over some portion or feature of a controversy, it may, and will in general, proceed to decide the whole issues, and to award complete relief, although the rights of the parties are strictly legal, and the final remedy granted is of the kind which might be conferred by a court of law."

In the State of New Jersey in the case of *Shaw* v. *Beaumont Co.*, 88 N. J. Eq. 333, our court of last resort in following this rule, has stated that it is a discretionary matter for the Chancellor whether he will retain the cause to afford complete relief. That discretion was exercised in the present case and affirmed by the Court of Errors and Appeals. In the petition filed with this court there is a suggestion that the respondent (De Geeter) feared the hazards of jury trial. The answer is complete. Jurisdiction over matters of partnership and joint adventure are, by New Jersey law, conferred on the Court of Chancery. The state statute, *R. S. 2:29-9*, provides that a jury trial may be had in the Court of Chancery, but is deemed waived unless demanded in the pleadings. No demand for a jury trial was made by Bennett in this particular case.

Although no question is raised in the brief submitted by Bennett to this court, there can be no question of jury trial here raised. Consistent with due process, trial by jury may be abolished by the state altogether. *Snyder* v. *Mass.*, 291 U. S. 97.

POINT TWO.

No Federal Question Was Raised in the State Court.

In the petition filed with this court, it is said that the constitutional question was raised in the New Jersey Court of Errors and Appeals. Reference is then made to page 7, paragraph O of the record. Such a claim is there set forth in the Petition of Appeal. It was not, however, argued. It is therefore deemed to be abandoned. *Sargeant Bros.* v. *Brancati,* 107 N. J. L. 84.

We are further told that the constitutional question was stressed in petitioner's brief. There is no reference to the page or pages of the brief where this question was stressed. As a matter of fact it was not even mentioned. There is no reference whatsoever to it in the opinion of the New Jersey Court of Errors and Appeals. The only jurisdictional question raised in Bennett's brief in the court below was the one that the decree was too broad. As stated above, this contention was decided against him and is dispositive of the question. Counsel for De Geeter, were never served with any application for any reargument in the New Jersey Court of Errors and Appeals. It cannot, therefore, be stated whether any federal question was raised in such application. But be that as it may, if raised for the first time on such an application, it is elementary that it will not be considered by this court.

Conclusion.

For the reasons above cited, it is respectfully requested that the application for certiorari be denied.

A sound public policy dictates that there should be an end to litigation. This is merely an attempt on the part of the petitioner to have this court decide purely local questions. No federal question is involved. Bennett was afforded an opportunity to be heard. The record below is voluminous. It indicates that every opportunity was afforded him to present his cause for determination. His contention was decided against him by two separate tribunals, each with fact-finding powers. Once the cause was properly before the Chancellor, it was but fitting and proper that he should determine the entire controversy, and not have it determined piecemeal. In his counterclaim, Bennett asked that De Geeter account to him for any moneys due and owing. It would be absurd to say that the Chancellor was without jurisdiction to determine that there was nothing owing from De Geeter to Bennett.

In concluding, it is well to call to this court's attention a mis-statement made in the moving papers. Reference is made to "lay" judges of the New Jersey Court of Errors and Appeals. There are no such judges. That court is composed of the Chancellor (who does not sit on appeals from equity), the Chief Justice and eight justices of the Supreme Court, together with six judges specially appointed. The Chancellor and the Justices of the Supreme Court are ex officio judges. The adjective "special" is used

to distinguish these judges from ex officio judges. *New Jersey State Constitution,* Article VI, Section II, paragraph 2.

Respectfully submitted,

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